

**DISCIPLINE COMMITTEE OF THE
COLLEGE OF DENTAL HYGIENISTS OF ONTARIO**

PANEL: Pauline Leroux, Chair, a professional member of Council,
 Yvonne Winkle, a public member of Council, and
 Jenny Gibson, a professional member of Council

BETWEEN:

College of Dental Hygienists of Ontario) Erica Richler, for the College of Dental Hygienists of Ontario
)
- and -)
)
)
Kathy Ngo (Registration No. 017562)) Lad Kucis, Counsel for the Registrant
)
)
) Elyse Sunshine, Independent Legal Counsel
)
)
) Heard: May 24, 2019

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee (the "Panel") on May 24, 2019, at the College of Dental Hygienists of Ontario (the "College") in Toronto.

The hearing was uncontested. It proceeded by way of an Agreed Statement of Facts and a Joint Submission on Penalty and Costs, which were jointly proposed by the counsel for the College and the Registrant, Kathy Ngo (the "Registrant").

At the conclusion of the hearing, the Panel delivered its finding and penalty order orally, with written reasons to follow. These are those reasons.

THE ALLEGATIONS

The allegations of professional misconduct against the Registrant were stated in the Notice of Hearing dated February 8, 2019, which was filed as Exhibit #1 and read as follows:

1. The Registrant is a duly registered dental hygienist in Ontario.

Failure to Comply with the Inquiries, Complaints and Reports Committee Decision

2. In August 2017, the College received information that the Registrant may have practised dental hygiene between July 16, 2017 and August 14, 2017 while holding an inactive certificate of registration and that she may have provided false information on an application to change her registration status. The matter was subsequently referred to the College's Inquiries, Complaints and Reports Committee (the "ICRC") for an investigation.
3. On April 27, 2018, a panel of the ICRC directed the Registrant to receive a written caution and to successfully complete a Specified Continuing Education or Remediation Program ("SCERP") consisting of an approved ethics course.
4. The panel of the ICRC specified that the Registrant was required to provide proof to the Registrar that she had commenced the ethics course within two months of the date of its decision (*i.e.*, by July 3, 2018) and to provide proof to the Registrar that she had successfully completed the course within six months of the date of its decision (*i.e.*, by November 1, 2018).
5. On or about May 1, 2018, the College sent the Registrant a copy of the ICRC's decision, as well as information on how to complete the course, including contact information for two course providers. On June 11, 2018, the College sent the Registrant her written caution.
6. On or about June 19, 2018, the College reminded the Registrant of the deadline (July 3, 2018) to submit proof of commencement of the ethics course. On or about June 22, 2018, the Registrant advised the College that one of the course providers was unable to take additional clients and she requested contact information for another provider. The College sent the Registrant information for the second course provider that same day.
7. The Registrant did not advise the College by July 3, 2018 that she had commenced the ethics course; however, an approved ethics course provider confirmed that the Registrant had commenced the ethics course on August 16, 2018.
8. On or about October 24, 2018, the College reminded the Registrant of the November 1, 2018 deadline to submit proof of completion of the ethics course.

9. On or about November 1, 2018, the Registrant sent an email to the College requesting an extension for the completion of the ethics course. The College denied her request on or about November 5, 2018.
10. The Registrant failed to meet the ICRC-directed deadlines for both the commencement and the completion of the ethics course.

Professional Misconduct Alleged

11. It is alleged that the above conduct constitutes professional misconduct pursuant to clause 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* and as defined in one or more of the following paragraphs of section 15 of Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*:
 - a. paragraph 45 (failing to comply with an order or direction of a Committee or a panel of a Committee of the College); and/or
 - b. paragraph 52 (disgraceful, dishonourable or unprofessional conduct); and/or
 - c. paragraph 53 (conduct unbecoming a dental hygienist).

WITHDRAWAL OF ALLEGATION

At the outset of the hearing, counsel for the College advised the Panel that the College sought to withdraw the allegation of conduct unbecoming a dental hygienist (paragraph 53 of section 15 of Ontario Regulation 218/94 under the Dental Hygiene Act, 1991). The Registrant advised the Panel that she consented to the College's request to withdraw this particular allegation.

The Panel made an order at the hearing that the allegation with respect to paragraph 53 (conduct unbecoming a dental hygienist) be withdrawn.

REGISTRANT'S PLEA

The Registrant admitted the allegations that she engaged in professional misconduct pursuant to the following paragraphs of section 15 of Ontario Regulation 218/94 under the Dental Hygiene Act, 1991:

- a. paragraph 45 (failing to comply with an order or direction of a Committee or a panel of a Committee of the College); and
- b. paragraph 52 (disgraceful, dishonourable or unprofessional conduct).

The Panel conducted a plea inquiry and was satisfied that the Registrant's admission was voluntary, informed and unequivocal.

AGREED STATEMENT OF FACTS

Counsel for the College advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts, dated, May 24, 2019, which was filed as Exhibit # 2 and which provides as follows:

1. The Registrant is a duly registered dental hygienist in Ontario, holding a certificate of registration from the College.

Failure to Comply with the Inquiries, Complaints and Reports Committee Decision

2. In August 2017, the College received information that the Registrant may have practised dental hygiene between July 16, 2017 and August 14, 2017 while holding an inactive certificate of registration and that she may have provided false information on an application to change her registration status. The matter was subsequently referred to the ICRC for an investigation.
3. On April 27, 2018, a panel of the ICRC directed the Registrant to receive a written caution and to successfully complete a SCERP consisting of an approved ethics course.
4. The panel of the ICRC specified that the Registrant was required to provide proof to the Registrar that she had commenced the ethics course within two months of the date of its decision (i.e., by July 3, 2018) and to provide proof to the Registrar that she had successfully completed the course within six months of the date of its decision (i.e., by November 1, 2018).
5. On or about May 1, 2018, the College sent the Registrant a copy of the ICRC's decision, as well as information on how to complete the ethics course, including contact information for two course providers. On June 11, 2018, the College sent the Registrant her written caution.
6. On or about June 19, 2018, the College reminded the Registrant of the deadline (July 3, 2018) to submit proof of commencement of the ethics course. On or about June 22, 2018, the Registrant advised the College that one of the course providers was unable to take additional clients and she requested contact information for another provider. The College sent the Registrant information for the second course provider that same day.

7. The Registrant did not advise the College by July 3, 2018 that she had commenced the ethics course; however, an approved ethics course provider confirmed that the Registrant had commenced the ethics course on August 16, 2018.
8. On or about October 24, 2018, the College reminded the Registrant of the November 1, 2018 deadline to submit proof of completion of the ethics course.
9. On or about November 1, 2018, the Registrant sent an email to the College requesting an extension for the completion of the ethics course, as she had not yet completed all parts of the course. The College denied her request on or about November 5, 2018.
10. It is agreed that the Registrant failed to meet the ICRC-directed deadlines for both the commencement and the completion of the ethics course.
11. The Registrant successfully completed the ethics course on or about March 4, 2019, and the College was advised of such on that same date. On or about March 5, 2019, the College wrote to the Registrant advising that she had now had fulfilled her obligations in accordance with the ICRC decision of April 27, 2018.
12. If the Registrant were to testify, it is expected that it would be her evidence that she was dealing with significant financial, family and other personal issues in 2018, which contributed to her failure to commence and complete the ethics course by the deadlines set out by the ICRC. These issues would be put forward as an explanation but not as a justification for her conduct.

Admission of Professional Misconduct

13. By this document, the Registrant admits to the truth of the facts referred to in paragraphs 1 to 12 above (the "Agreed Facts").
14. The Registrant admits that the Agreed Facts constitute professional misconduct pursuant to the following paragraphs of section 15 of Ontario Regulation 218/94 under the Dental Hygiene Act, 1991:
 - a. paragraph 45 (failing to comply with an order or direction of a Committee or a panel of a Committee of the College); and
 - b. paragraph 52 (disgraceful, dishonourable or unprofessional conduct).

I SUBMISSIONS OF THE PARTIES ON LIABILITY

The College submitted that the facts and admissions contained in the Agreed Statement of Facts made out all the acts of professional misconduct admitted to by the Registrant.

The College submitted that there was clear evidence that the Registrant failed to comply with a direction of the ICRC and that this constitutes professional misconduct.

The Registrant apologized for her conduct. She stated that she takes responsibility for her conduct.

DECISION

The Panel carefully considered the Agreed Statement of Facts and the Registrant's plea, and finds that the facts fully support a finding of professional misconduct and, in particular, finds that the Registrant committed the following acts of professional misconduct pursuant to the following paragraphs of section 15 of Ontario Regulation 218/94 under the Dental Hygiene Act, 1991:

- a. paragraph 45 (failing to comply with an order or direction of a Committee or a panel of a Committee of the College); and
- b. paragraph 52 (disgraceful, dishonourable or unprofessional conduct).

PENALTY

The parties submitted a Joint Submission on Penalty and Costs ("JSPC") with respect to the appropriate order in this case, which was filed as Exhibit # 3, and which provides as follows:

1. The Registrant is required to appear before a panel of the Discipline Committee immediately following the hearing of this matter to be reprimanded, with the fact of the reprimand and a summary of the reprimand to appear on the public register of the College.
2. The Registrar is directed to suspend the Registrant's certificate of registration for a period of four (4) weeks, effective immediately.
3. The Discipline Committee shall direct the Registrar to impose the following terms, conditions or limitations on the Registrant's certificate of registration:
 - a. The Registrant is required to successfully complete in the opinion of the Registrar (i.e., obtain an unconditional pass) the Professional Problem-Based Ethics Program ("PROBE") offered by the Center for Personalized Education for Professionals within six months after returning to practise following the suspension referred to in paragraph 2 above.

- b. The Registrant is required to respond to all College communications that require a response within 15 days for one year following the date of the Discipline Committee order, following which she will be required to respond within the regular timeline applicable to registrants of the College, namely 30 days.
4. The Registrant is required to pay to the College costs in the amount of \$1,200.00, payable over six (6) months in equal monthly pre-authorized credit card payments of \$200.00, starting July 21, 2019, and continuing every month until paid. The Registrant shall provide her authorization to the College for the credit card payments on the date of the Discipline Committee's order.

SUBMISSIONS ON PENALTY

Counsel for the College submitted that the proposed penalty and costs were appropriate under the circumstances and with respect to the relevant legal principles. Specifically, counsel for the College submitted that the penalty will protect the public and serve as a deterrent for the Registrant and for other members of the College.

The College also provided the Panel with copies of the following discipline cases in order to provide the Panel with comfort that the JSPC was proportionate, consistent with other cases and would not bring the administration of justice into disrepute:

1. Ontario (College of Dental Hygienists of Ontario) v Pallas, 2016 ONCDHO 5 (CanLII)
2. Ontario (College of Dental Hygienists of Ontario) v Aarons, 2018 ONCDHO 6 (CanLII)
3. Ontario (College of Dental Hygienists of Ontario) v Anwar, 2016 ONCDHO 4 (CanLII)

The Registrant submitted that the proposed penalty was appropriate in the circumstances. She outlined some mitigating factors for the Panel to consider including that she was a single mother who had significant personal issues occurring during the events in question, the fact that she had no prior misconduct, and that by admitted to the conduct, she demonstrated remorse and insight and saved the College the time and cost of a contested hearing. The Registrant also submitted that although she had failed to commence and complete the ethics course as required, she did in fact ultimately do so.

The Panel received and accepted the advice of Independent Legal Counsel that it is under a legal obligation to accept a jointly proposed penalty order unless it is contrary to the public interest and/or would bring the administration of justice into disrepute.

PENALTY DECISION

The Panel carefully considered the Joint Submission on Penalty and Costs, the legal precedents cited, and the oral submissions of the parties.

The Panel considered the terms of the proposed order and concluded that the proposed order met the needs of this case and addressed the legal principles relevant to making an order.

Accordingly, the Panel accepted the joint submission and made the following order:

1. The Registrant is required to appear before a panel of the Discipline Committee immediately following the hearing of this matter to be reprimanded, with the fact of the reprimand and a summary of the reprimand to appear on the public register of the College.
2. The Registrar is directed to suspend the Registrant's certificate of registration for a period of four (4) weeks, effective immediately.
3. The Discipline Committee shall direct the Registrar to impose the following terms, conditions or limitations on the Registrant's certificate of registration:
 - a. the Registrant is required to successfully complete in the opinion of the Registrar (i.e., obtain an unconditional pass) the Professional Problem-Based Ethics Program ("PROBE") offered by the Center for Personalized Education for Professionals within six months after returning to practise following the suspension referred to in paragraph 2 above.
 - b. the Registrant is required to respond to all College communications that require a response within 15 days for one year following the date of the Discipline Committee order, following which she will be required to respond within the regular timeline applicable to registrants of the College, namely 30 days.
4. the Registrant is required to pay to the College costs in the amount of \$1,200.00, payable over six (6) months in equal monthly pre-authorized credit card payments of \$200.00, starting July 21, 2019, and continuing every month until paid. the Registrant shall provide her authorization to the College for the credit card payments on the date of the Discipline Committee's order.

REASONS FOR DECISION ON PENALTY

The Panel notes that the principles relevant to the imposition of an appropriate order in disciplinary proceedings are well established, and help ensure that such misconduct will not be repeated. The protection of the public is the paramount consideration. Other factors include: maintenance of public confidence in the reputation and integrity of the profession and in the principle of effective self-governance; general deterrence as it

applies to the membership as a whole; specific deterrence as it applies to the particular Registrant; and the potential for the Registrant's rehabilitation.

The Panel weighed these principles, taking into account the specific facts and circumstances of this case, when deciding whether to accept the joint submission.

The Panel considered aggravating and mitigating factors. Specifically, the aggravating factor in this case being the conduct itself and the mitigating factors include the fact that the Registrant admitted the allegations against her, saving the College the time and money of a contested hearing and the fact that the Registrant does not have a prior record of professional misconduct. The Panel also considered that the Registrant ultimately did complete the required course.

Ultimately, the Panel was of the opinion that the Order appropriately addresses the principles of public protection, general deterrence and specific deterrence, and rehabilitation. Furthermore, the proposed order was in keeping with penalty decisions in other cases.

The suspension, reprimand, and the terms, conditions or limitations on the Registrant's certificate of registration, along with the successful completion of the PROBE course, are intended to ensure that the Registrant's conduct will not be repeated, which, in turn, serves to protect the public.

By way of specific and general deterrence, the significance of the Order communicates to the Registrant and the profession that such misconduct will not be tolerated and that the Discipline Committee will seek to deter members from engaging in conduct that disregards the College's public protection mandate.

At the conclusion of the hearing, the Registrant waived her right of appeal and the reprimand was administered by the Panel.

"I, **Pauline Leroux**, sign this decision and reasons for the decision as Chair of this Discipline Panel and on behalf of the members of the Discipline Panel as listed below:



Pauline Leroux, Chair Discipline Panel

June 6, 2019.
Date

**Yvonne Winkle, a public member of Council, and
Jenny Gibson, a professional member of Council.**